

### **REMARKS**

Reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1 and 7-14 are currently pending in the application and subject to examination. No amendment has been made.

In the Office Action, Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 5,524,433 to Adamezyk Jr. et al. ("Adamezyk") in view of U.S. Patent No. 5,657,736 to Maki et al. ("Maki"), Claims 7-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Adamczyk in view of Maki, and further in view of U.S. Patent No. 5,613,359 to Zahn ("Zahn"), and Claims 11-14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Adamczyk in view of Maki, and Zahn, and further in view of U.S. Patent No. 5,606,855 to Tomisawa ("Tomisawa"). Applicants respectfully traverse the rejection based on the following reasons:

Applicants submit that Maki was cited by the Applicant as in an IDS filed with the Applicants. The Examiner incorrectly states that Maki is "applicants admitted prior art." There is no basis for this holding. Simple citation in an IDS is insufficient to make a reference equal "prior art" (37 C.F.R. 1.97(h)).

It is also respectfully submitted that Maki is not proper prior art under 35 U.S.C. 103(c) (based on U.S.C. 102(e)). Maki is commonly-owned by the same Assignee of the present application at the time the invention was made. As in the record, the present invention is a continuation application of U.S. Patent Application No. 09/945,835, filed September 5, 2001 (attorney docket No. 107101-07003, hereinafter "the parent application"), which in turn is a reissue application of U.S. Patent No.

5,946,906 ("the '906 patent"), filed November 20, 1997 and issued on September 7, 1999, and having a November 20, 1996, invention date. Maki was published on August 19, 1997, which is not earlier more than one year before the '906 patent was filed. Consequently, 35 U.S.C. 102(b) does not apply as a basis. Since the invention date of November 20, 1996, predates the patenting of Maki, 102(a) also does not apply as a basis. Further, there is one common inventor, Mr. Shusuke Akazaki, in the present invention and Maki. 35 U.S.C. 103(c), based on the common Assignee, provides that Maki should be removed as a prior art under 35 U.S.C. 102(e).

Therefore, Maki is not qualified as a prior art. Applicants respectfully request that Maki be withdrawn from consideration.

The Office Action also admitted that Adamczyk fails to teach or suggest the EGR correction coefficient calculating means that calculates an EGR correction coefficient, and that the fuel injection quantity correcting means corrects the quantity of fuel injection based on at least the EGR correction coefficient and a feedback correction coefficient, as recited in Claim 1. Therefore, after removal of the cited reference Maki, Claim 1 and its dependent claims 7-14 are allowable over Adamczyk, Zahn, and Tomisawa.

### **CONCLUSION**

For all of the above reasons, it is respectfully submitted that the claims now pending patentability distinguish the present invention from the cited references. Accordingly, reconsideration and withdrawal of the outstanding rejections and an issuance of a Notice of Allowance are earnestly solicited.

In the event this paper is not considered to be timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension may be charged to our Deposit Account No. 01-2300. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this communication to Deposit Account No. 01-2300, with reference to Attorney Docket No. 107101-00050.

Respectfully submitted,  
Arent Fox PLLC



Wan-Ching Montfort  
Registration No. 56,127

**Customer No. 004372**

1050 Connecticut Ave., N.W. Suite 400  
Washington, D.C. 20036-5339  
Telephone No. (202) 857-6008  
Facsimile No. (202) 638-4810

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